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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re)
)
 Amendment of the Commission's Rules) WT Docket No. 97-82
 Regarding Installment Payment)
 Financing for Personal Communications)
 Services ("PCS") Licensees)
 Installment Payment Restructuring)

To: The Commission

REPLY TO COMMENTS ON PETITIONS FOR RECONSIDERATION

CONXUS Communications, Inc. ("CONXUS"), by counsel and pursuant to FCC Rule Section 1.429, replies to certain comments filed with respect to its November 24, 1997, Petition for Reconsideration of the Commission's *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342 (October 16, 1997), 62 Fed. Reg. 55375 (October 24, 1997) ("*C Block Order*") in the above-referenced proceeding, and shows the following:

1. As CONXUS has previously explained, it is implementing a nationwide narrowband Personal Communications Service ("PCS") system on its five regional 50/50 KHz narrowband PCS channels, which will provide the public advanced two-way messaging service. Its product is a portable, wireless "answering machine" or "voice mail" device called Pocket Talk.™ It is an economical means for voice messaging with an acknowledgement feature by which the sender will know whether the message was received. CONXUS currently has several major markets constructed and has commenced commercial operation in South Florida and Washington, D.C. Based upon progress to date, CONXUS projects it will complete its five year buildout requirements in 1998, one and one-half years ahead of

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schedule, and is forecasting that it will complete its 10 year buildout requirements in 1999, a full five years ahead of schedule. All of that assumes, of course, that CONXUS has adequate access to capital to maintain the current pace of its buildout.

2. CONXUS is seeking reconsideration of the C Block Order,^{1/} on the basis that the Commission must afford equal treatment to narrowband and broadband PCS, which are competitive services. As CONXUS explained in its reconsideration petition, because the C Block Order fails to provide any meaningful relief to narrowband PCS licensees, while offering at least some partial relief options to broadband PCS entities, it must be reconsidered.

3. A review of opposition filings and comments submitted with respect to the 30 plus petitions and informal requests for reconsideration of the C Block Order, reveals that only one party, AmeriCall International, LLC, opposed applying C block relief to narrowband PCS installment debtors. See AmeriCall's Comments on Petitions for Reconsideration (December 23, 1997). AmeriCall points out that the Commission's sole rationale for not applying C block relief to other PCS bands, such as the F block and narrowband PCS, was that the "per-MHz-pop prices bid were higher in the C block auction than in the F block auction." *Id.* at 3.^{2/} AmeriCall

^{1/} See Petition for Reconsideration, WT Docket 97-82 (November 24, 1997).

^{2/} AmeriCall appears to disagree somewhat with this reasoning, pointing out that it made "extremely low" per pop bids in the C block auction. *Id.* at 3 n.1. In any event, the Commission made no mention why it would not apply C block relief to narrowband designated entities, who are entitled to
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argues, however, that the C block uniquely experienced the several additional events listed below, some of which were noted by Hyundai Electronics America in its petition:^{3/}

- litigation delays before the auction;
- administrative delays in the licensing process after the auction;
- subordination of security interests, announced after the auction (unlike the F block) which discouraged sources of debt financing;
- no simultaneous non-entrepreneur auction (where bidders could have used the non-entrepreneurial blocks as a pressure valve, easing price pressures in the entrepreneurs band by placing new bids in the non-entrepreneur blocks); and
- unlike the D block, E block, and the narrowband PCS auctions, the C block was implemented under the Congressional mandates of 47 U.S.C. § 309(j) that the FCC disseminate licenses to a wide variety of applicants, including small businesses, and make available opportunities for small businesses to engage in the provision of spectrum based services.

4. AmeriCall's discussion of the factors contributing to the C block's financial woes is particularly helpful, given the scant discussion in the *C Block Order*. AmeriCall's analysis omits to consider, however, much less address, CONXUS's showing in its petition,^{4/} that its situation is comparable to that of the various

^{2/} (...continued)

installment payment treatment of their auction bids just like C block licensees. See *C Block Order* at ____.

^{3/} AmeriCall Comments at 3-4. Hyundai's comments mentioned a loss of support from financial underwriters, licensing delays, and additional spectrum auctions as factors which have made anticipated financings more difficult than expected. See Hyundai's Petition for Reconsideration (November 24, 1997).

^{4/} CONXUS Petition at 2-3 & 5. See also CONXUS's Comments on Petitions for Reconsideration (December 23, 1997), at 2-5.

C block licensees. That showing indicated CONXUS has faced the same type of financial difficulty which C block licensees have reported in raising capital to make its installment payments while also constructing and marketing its system in competition with larger, better financed, well established telecommunications concerns.

5. Like a number of C block broadband PCS licensees, CONXUS has had to cancel financing offerings, in CONXUS's case, two such offerings -- one equity offering in late 1996 and one high yield offering in mid 1996. Similar to the C block licensees, CONXUS is financing a multimillion dollar obligation to the government and implementing a system which will incur infrastructure costs of several hundred million dollars. These expenditures are comparable to that faced by a regional PCS licensee, and the capital required must be raised from the financial markets, as opposed to small business loans from banks or private placement financing.^{5/}

^{5/} Furthermore, like C block licensees, narrowband PCS licensees are suffering severe financial harm. Of the various entities originally obtaining licenses to operate narrowband PCS systems, most have been unable to implement their plans. MobileMedia is bankrupt and CONXUS knows of no progress the licensee has made to build out its system. PageNet's narrowband PCS system has failed to obtain commercial acceptance and the licensee has stopped construction. AT&T, which hardly lacks financial staying power, is nevertheless exiting the market. Benbow, a fellow designated entity, has made no reported progress to date in implementing its system, while Instacheck, the third narrowband PCS designated entity, has reportedly built out only one system in Puerto Rico. Other than CONXUS, only Mtel, which enjoyed the financial benefit of a pioneer's preference for the service, is providing and actively expanding its service to the public. None of the other non-designated entities appear to have done anything with their licenses to date. Thus, as a result of
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CONXUS, therefore, competes in the same financial markets for capital as and with broadband PCS licensees.^{5/}

6. Moreover, narrowband PCS and broadband PCS are competing services. Indeed, in several respects, they offer identical service. For example, wideband PCS licensees have been touting their ability to offer both paging and voice mail service, and generally initially include such services without cost in their package of service offerings. These are the same services offered by CONXUS's Pocket Talk™. Factoring in such variables as battery life, portability and service cost, CONXUS competes directly with wideband PCS for market share. Because CONXUS competes directly with wideband PCS, any relief the Commission offers wideband PCS, without also offering narrowband PCS, will further adversely affect CONXUS's ability to obtain necessary financing in competition with wideband PCS entities in the financial markets.

7. Likewise comparable is the price per MHz pop CONXUS paid for its 100 KHz of spectrum compared to the prices paid by the various C block licensees for their spectrum. Indeed, if one were to apply the same price per MHz pop that CONXUS paid to the entire C block, it would yield a figure of \$27 billion -- *more than two and one-half times the net total bid on all the C block licenses.*

^{5/} (...continued)

the issues discussed above, the commercial implementation of narrowband PCS is certainly no farther along than the C block as a whole, if that far.

^{6/} Indeed since the close of the narrowband regional PCS auction, CONXUS has paid the U.S. Treasury some \$29,000,000.

Plainly in terms of MHz per pop, CONXUS bid much more than the affected licensees in the C block.

8. AmeriCall's analysis, at least with respect to narrowband PCS, is thus flawed by its failure to discuss CONXUS's showing that its situation is comparable to C block PCS licensees. Furthermore, with respect to the specific factors AmeriCall did discuss, as we show below, these factors actually support application of C block relief to narrowband designated entities.

9. Although, it cannot be said that there were substantial litigation delays to both the narrowband and the C block auctions, it is significant that C block licensees have substantially more beneficial payment terms than do narrowband PCS designated entities. C block licensees have six years of interest only payments, as opposed to only two years for narrowband PCS designated entities. And this is despite that in CONXUS's case it will require at least \$500 million more in new capital to cover its nationwide buildout and repay its FCC installment debt. This is a larger amount than 90 percent of C block licensees.^{2/}

10. With respect to licensing delays, these were factors adversely affecting CONXUS's entry into the narrowband PCS market. Although nationwide narrowband PCS spectrum was auctioned in the Summer of 1994, CONXUS obtained its spectrum in the regional narrowband PCS auction held later that year. Thus, CONXUS was delayed in its ability to get to market to compete against other

^{2/} See CONXUS's Comments on Further Notice of Proposed Rulemaking, FCC 97-140, 12 FCC Rcd ____ (1997) (June 18, 1997).

nationwide narrowband PCS entities. And this delay did in fact adversely affect CONXUS's ability to get to market. For example, because of its several month advantage in obtaining its license, nationwide narrowband PCS licensee PageNet was able to negotiate a six month exclusive arrangement with respect to the only source of subscriber equipment compatible with CONXUS's narrowband PCS system. This arrangement delayed CONXUS's commencement of service until September of 1997, due to the unavailability of subscriber equipment. This was substantially beyond the date CONXUS could and would have begun commercial service otherwise.

11. As to material changes in the rules, such as the subordination of security interests, announced after the C block auction, discussed by AmeriCall, CONXUS has also faced similar circumstances. The most significant of such rule changes is in the proposed reallocation of the remaining narrowband PCS spectrum. Originally, this spectrum was to be auctioned via a combination of nationwide/regional/MTA and BTA segments, it is now proposed that this spectrum be reallocated to nationwide and regional blocks.^{8/} CONXUS intended to bid on selected BTA licenses to obtain additional spectrum in major urban areas where necessary to meet expected demand. The proposed reallocation of this spectrum invalidates that strategy. Moreover, it significantly expands the supply of nationwide and/or regional narrowband PCS spectrum, which in turn serves to devalue CONXUS's nationwide narrowband spectrum.

^{8/} See Further Notice of Proposed Rulemaking, FCC 97-140, 12 FCC Rcd ____, at para. 3.

12. Similarly, the suggestion that the C block did not have a simultaneous non-entrepreneur auction -- which could have served as a pressure valve to ease prices -- might be a basis for distinguishing the C and F blocks, but not for distinguishing the narrowband PCS auction. As indicated above, the nationwide PCS narrowband auction occurred prior to the regional auction in which CONXUS participated as a designated entity. In that nationwide PCS auction, there were only three 50/50 KHz narrowband PCS channels available for auction, and only one channel was eligible for bidding credits to designated entities. Moreover, the bidding credit for female/minority controlled businesses, such as CONXUS, in that nationwide narrowband PCS auction, was substantially below that subsequently offered in the regional narrowband PCS auction, and there was no restriction on non-designated entities bidding for that one license. As a result, no designated entity was high bidder on the only channel for which bidding credits were provided.

13. In the regional narrowband PCS auction, the situation was even more restrictive. Only two 50/50 KHz channels were available in each region, and only one was eligible for bidding credits, while non-designated entities were allowed to bid for each channel. As could have been expected from the way that auction was set up, CONXUS had to overbid non-designated entities to capture the five regional narrowband licenses necessary to construct its nationwide system. And indeed, the price for those five licenses totalled approximately 40 percent more, equaling the amount of the bidding credit allowed, than the price for spectrum on which no bidding

credits were allowed. Thus, the history of bidding in the narrowband PCS auctions indicate that for designated entities, just as with C block licensees, there was no relief valve in being able to bid on non-designated entity allocated blocks. And as discussed above, the bottom line was that CONXUS paid more than two and one-half times the amount bid for the entire C block on a MHz per pop basis.

14. Finally, as is apparent from the above discussion, AmeriCall is simply wrong in suggesting that the narrowband PCS auctions were not implemented under the Congressional mandate that the FCC disseminate licenses to a wide variety of applicants, including small businesses and make available opportunities for small businesses to engage in the provision of spectrum based services. Indeed, it was only in the narrowband PCS auctions where the Congressional intent that minority and female controlled enterprises be accorded an enhanced opportunity to participate in spectrum based services was actually implemented, although as also discussed above, implementation of that intent was substantially impeded by an auction design which limited the utility of designated entity status to only one selected 50/50 KHz license in each auction.

15. In sum, a review of the factors which AmeriCall cites to justify distinguishing the C block from the F block and from narrowband PCS, serves to highlight the similarities in the situations of C block and narrowband PCS designated entity licensees. In light that no material difference exists between C

block and narrowband PCS designated entities, the Commission must reconsider its *C Block Order* to afford similar treatment to C block and narrowband PCS designated entities.

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CERTIFICATE OF SERVICE

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